

Serial No. 09/845,309
Docket No.: NEC-F100/USA
IDE.003

REMARKS

Applicant concurrently files herewith a petition and fee for a two-month extension of time.

Claims 1-8 and 15-22 are presently pending in this application. Independent claims 1, 6, 15, and 18 have been amended to more particularly define the invention. Claims 21 and 22 have been added to claim additional features of the invention.

On March 30, 2005, the undersigned attorney had a personal interview with examiner Viet Vu with regard to this application. During the interview Examiner Vu stated that in view of the number of amendments to claim 1 in the Amendment filed September 10, 2005, "there must have" been a change in the scope of the claim, and so the November 24, 2005 Office Action was properly a final rejection. No attempt was made to indicate any particular amendment to claim 1 that resulted in a change in scope of the claim.

In the final rejection, claims 1, 4-6, 15 and 18 were rejected under 35 U.S.C. §103(a) as being unpatentable over Boyle, et al., U.S. Patent No. 6,138,158. Claims 2-3, 7-8, 10-11, 16-17 and 19-20 were rejected under 35 U.S.C. §103(a) as being unpatentable over Boyle, et al. and further in view of Beyda, et al., U.S. Patent No. 6,275,850. These rejections are respectfully traversed.

The claimed invention is directed to a mobile terminal and to a method of communicating using a mobile terminal. In accordance with exemplary embodiments of the invention, a communication channel is selected from a plurality of communication channels, including at least a packet communication channel and a line switching channel, and the selected communication channel is used for the individual accompanying data.

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During the March 30, 2005 interview the undersigned attorney pointed out that, as stated in the Remarks of the February 18, 2005 Amendment, in the claimed invention an individual accompanying data communication channel determination part determines a communication channel for receiving the accompanying data according to the information included in the main data, while in Boyle use of a broadband channel is dictated, and in Beyda the same channel is always used. Examiner Vu indicated that although this argument deserves consideration, he believes that such a feature might be found in other prior art.

The independent claims have been amended to set out that the accompanying data is received or communicated on a communication channel selected from a plurality of communication channels, including at least a packet communication channel and a line switching channel. Accordingly, the claims distinguish even more clearly from Boyle and Beyda, whether these references be considered separately or in combination.

In view of the foregoing, Applicant submits that claims 1-8 and 15-22, all the claims presently pending in the application, are patentably distinct over the prior art of record and are allowable, and that the application is in condition for allowance. Such action would be appreciated.

Should the Examiner find the application to be other than in condition for allowance, the Examiner is requested to contact the undersigned attorney at the local telephone number listed below to discuss any other changes deemed necessary in a telephonic or personal interview.

To the extent necessary, Applicant petitions for an extension of time under 37 CFR §1.136. Please charge any shortage in the fees due in connection with the filing of this paper,


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including extension of time fees, to Attorney's Deposit Account No. 50-0481 and please
credit any excess fees to such deposit account.

Respectfully Submitted,

Date:

April 20, 2005



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